IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

CRP.No. 1391 of 1995(E)

RCA.142/1992 of I ADDL.DISTRICT COURT, ERNAKULAM
RCP.87/1989 of II ADDL.M.C., ERNAKULAM
.....

REVN. PETITIONERS/APPELLANTS/PETITIONERS:

1. **DENNY, AGED 35, S/O JOSEPH PINDIS, PANNIPPILLIL HOUSE, NADAMA VILLAGE, NADAMA DESOM, KANAYANNUR TALUK.**

2. **SARA, AGED 72, D/O ULAHANNAN, DO. DO. (DIED)**

3. **JOSEPH PINDIS, AGED 69, S/O ULAHANNAN, DO. DO.**

It is recorded that the 2nd petitioner died and petitioners 1 and 3 are her legal representatives as per order dt. 1.8.00 on memo dt. 17.6.00 bearing cf No.7058/00

BY ADV. SRI.VARGHESE C.KURIAKOSE

RESPONDENTS/RESPONDENTS:

1. **VILASINI, AGED 58, W/O LATE VELAYUDHAN, AKKARAPARAMBIL, RESIDING AT CHOORAKKATT THEKKUMBHAGAM, TRIPUNITHURA.**

2. **UNNIKRISHNAN @ PONNA, AGED 38, S/O LATE VELAYUDHAN, DO. DO.**

3. MURUKAN, AGED 35, DO. DO. DO.

4. DINESAN, AGED 31, DO. DO. DO.

5. RAMANI, AGED 29, W/O SHAJI PULIKUNNEL,
   KULASEKHARAPURAM VILLAGE,
   (VIA) KADUTHURUTHY.

6. M.V.UDAYAKUMAR, AGED ABOUT 44,
   PROPRIETOR, PANT HOUSE, 1ST FLOOR,
   EVEREST HOTEL BUILDING, EAST FORT
   GATE, TRIPUNITHURA.

7. VENUGOPALAN, AGED 38, S/O KRISHNAN,
   SREEKALA MUSICALS, DO. DO.

BY ADV. SRI.K.P.BALASUBRAMANYAN
SRI.E.M.MURUGAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 12/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.Balakrishnan Nair &
K.P.Balachandran, JJ.

C.R.P.No. 1391 of 1995

ORDER

Balakrishnan Nair, J.

The petitioners are the landlords. The respondents are the tenants. The Rent Control Petition was filed, inter alia, under Section 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act'). The tenants were running a hotel under the name and style of 'Hotel Everest' in the scheduled building. While so, they acquired a plot of land, in which a building was constructed. In that building, all the tenants are jointly running a hotel under the name and style of 'Hotel Himalaya'. In view of the said acquisition of the building, which is reasonably sufficient to house the business run in the scheduled building, the

landlords sought for eviction of the tenanted premises under Section 11(4)(iii) of the Act. The tenants resisted the said ground contending that the plot, wherein the new building is constructed, belongs to respondents 2 and 3 alone. A portion of the plot was acquired under Exhibit B2 deed by the second respondent and the balance portion was acquired under Exhibit B3 deed jointly by the second and third respondents. The said respondents have constructed a building and is running a hotel there. It is not a business run by all the respondents. They do not have joint possession over the said building.

2. The Rent Controller upheld the contentions of the landlords and allowed the Rent Control Petition under Section 11(4)(iii) of the Act. On appeal, the appellate authority reversed the said finding. Hence, this revision under Section 20 of the Act.

3. Before the appellate authority, the tenants contended that in view of Exhibits B2 and B3, the title over the property vests in respondents 2 and 3 only. The business conducted in the scheduled building is run as a family business. The respondents are the joint tenants. Hotel Himalaya is not a joint property of all the respondents. To get eviction under Section 11(4)(iii) of the Act, the acquisition of the new building must be by all the tenants. Acquisition by some of them is not sufficient. The appellate authority relied on the decision of the Apex Court in **Mohd. Azeem v. District Judge, Aligarh** (AIR 1985 SC 1118) and allowed the appeal. It was a case arising under the U.P.Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. The appellate authority took the view that the said decision squarely applies to the facts of the said decision.

4. The learned counsel for the revision petitioners attacked the said finding mainly

contending that the ownership of the plot or the building by the respondents is not relevant. What is crucial is possession. All the respondents were jointly in possession of the newly acquired building. It is their burden to show that only respondents 2 and 3 are in possession of the building and others have no possession. Since they have failed to prove that, the finding of the appellate authority is not sustainable. The learned counsel for the respondents, on the other hand, contended that in the Rent Control petition, the landlords proceeded on the footing that all the tenants have jointly acquired the land and constructed the building and they are jointly running the business. But, when confronted with Exhibits B2 and B3 documents, PW1 pleaded ignorance about actual possession of the building, it is pointed out.

5. The only point to be decided is as to whether the respondents are in actual joint

possession of the newly acquired land and building, where the Hotel Himalaya is housed. Going by the decision of the Apex Court in **Abdul Salam v. Bhaskaran** (2005 (3) KLT 71), we feel that joint possession of the newly acquired land and building is necessary. Possession by some of the tenants will not be sufficient to invoke Section 11(4)(iii) of the Act for getting eviction. The learned counsel for the petitioners do not dispute that legal position. But, his assertion is that on the facts of this case, joint possession of the new building by all the tenants is proved. The learned counsel also submitted that the tenants should have produced the D&O licence obtained from the Municipality to show who was actually running the business.

6. Though the appellate authority is the final court of fact, this Court is justified in going through the evidence adduced in the case, to ascertain whether the finding of the appellate

authority is illegal, irregular or improper. Both sides referred to the evidence of PW1 and RW1. PW1, in his cross-examination, was confronted with a specific question by the tenants that the building, where the Hotel Himalaya is housed, exclusively belongs to respondents 2 and 3 and the Restaurant is run by them. There was no specific answer to the said question from the part of the first petitioner. His answer was that he was not aware of that. Unless PW1 has a specific case that the tenants are in joint possession and they are running the business, the burden never shifts to the tenants. It is for the landlords to prove the essential ingredients of Section 11(4)(iii) of the Act to claim eviction under the Section. The above answer would show that the landlords failed to even assert that the newly acquired building is not in the possession of respondents 2 and 3 alone. In view of the above position, we feel that the finding of the appellate authority is justified on

the facts and materials on record. In any view of the matter, no ground has been made out, warranting interference by this Court under Section 20 of the Act with the finding of the appellate authority.

In the result, the revision petition fails and it is dismissed. No costs.

(K.Balakrishnan Nair, Judge)

12th November, 2007

(K.P.Balachandran, Judge)

tkv

K.Balakrishnan Nair &
K.P.Balachandran, JJ.

C.R.P.No.1391 of 1995

ORDER

12th November, 2007